UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/40
24 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 9 of the agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report on the situation of human rights in Afghanistan submitted by Mr. Kamal Hossain, Special Rapporteur in accordance with Commission on Human Rights resolution 1998/70

GE.99-11654 (E)

Introduction

1. A Special Rapporteur was first appointed to examine the human rights situation in Afghanistan in 1984 (Economic and Social Council resolution 1984/37 of 24 May 1984). Since then the mandate has been renewed regularly. Mr. Felix Ermacora served as Special Rapporteur for Afghanistan from 1984 until his death in 1995. Mr. Choong-Hyun Paik was appointed in April 1995 and his mandate was renewed in 1996 and 1997. However, he resigned towards the end of 1998.

2. Before his resignation, Mr. Paik submitted to the Commission on Human Rights a report (E/CN.4/1998/71 of 12 March 1998) referred to below as the 1998 report. An interim report (memorandum) prepared by him was transmitted to the General Assembly with a note by the Secretary-General (A/53/539 of 26 October 1998), referred to below as the 1998 interim report.

3. The present Special Rapporteur was appointed by the Commission on Human Rights in December 1998. He received some of the background documentary material in New York in January 1999 and indicated the need urgently to schedule a visit to Afghanistan in order to be able to submit his report to the Commission at its next session. He visited Geneva in the first week of February 1999 and had the benefit of background briefing in the Office of the United Nations High Commissioner for Human Rights (OHCHR). He met the High Commissioner and other senior officials. He also met the United Nations High Commissioner for Refugees and senior officials of UNHCHR.

4. The visit to Afghanistan remained subject to a security assessment being conducted by the United Nations following the withdrawal of all international United Nations agency personnel from Afghanistan after a United Nations Special Mission to Afghanistan (UNSMA) official was killed in 1998. The return of United Nations personnel was to take place when "the security situation proved conducive to their return". The Special Rapporteur scheduled a visit for mid-February 1999 but was advised to defer his visit for a few weeks. Ultimately, he visited Afghanistan from 16 to 18 March 1999. He was in Islamabad on 15, 16, 19 and 20 March and in Peshawar on 18 and 19 March 1999.

5. In Kabul, the Special Rapporteur held meetings with the Deputy Minister for Foreign Affairs, the Deputy Minister of Health, the Minister for the Promotion of Virtue and Prevention of Vice and senior officials of the respective ministries. He had a round-table meeting with representatives of United Nations agencies. He also met representatives of NGOs and a cross-section of citizens. The Special Rapporteur visited the Maiwand Hospital and went to different parts of the city and saw the devastation caused by the protracted armed conflict.

6. In Islamabad, the Special Rapporteur had meetings with the Minister for Foreign Affairs of Pakistan and senior officials of the Ministry of Foreign Affairs, with United Nations officials and NGO representatives engaged in humanitarian assistance operations in Afghanistan. In Peshawar, he met a cross-section of Afghan refugees - men and women - representatives of NGOs and United Nations agencies and government officials.

7. The Special Rapporteur, in these circumstances, was presented with an impossible time constraint in preparing a report which he was advised had to be submitted by 22 March 1999. Given significant developments which had taken place since the submission of the 1998 report by his predecessor, the Special Rapporteur felt it was important for him to submit a written report, even if only in an abridged form, in order to review the impact of those developments on the human rights situation in Afghanistan. The present report, therefore, highlights the key facts and issues, which could subsequently be elaborated upon in a detailed report to the United Nations General Assembly. In view of the time required for translation and circulation, the Special Rapporteur was requested to limit the present report to around 12 pages.

8. The Special Rapporteur wishes to express his sincere appreciation to the authorities of Afghanistan and the Government of Pakistan for having extended full cooperation and to officials of the United Nations and its agencies, and to NGO representatives whom he met in connection with his mandate. He would, in particular, like to thank the United Nations Coordinator for Afghanistan and the staff of the Office for the Coordination of Humanitarian Affairs (OCHA) of the United Nations in Islamabad and Kabul for their invaluable assistance, without which it would have been impossible for the Special Rapporteur to carry out his mission.

I. OUTLINE OF EVENTS RELATING TO THE POLITICAL SITUATION IN AFGHANISTAN SINCE THE SUBMISSION OF THE 1998 REPORT

9. The period under review (1 September 1998-20 March 1999) witnessed the continuation of the armed conflict. Its major features are reviewed in the United Nations Secretary-General's report on the situation in Afghanistan of 23 November 1998 (A/53/695-S/1998/1109) and in related documents.

10. After taking control of Mazar-I-Sharif on 8 August 1998, the Taliban went on to capture Bamyan on 13 September 1998, completing their sweep of northern Afghanistan, with the exception of a few provinces in the north-east. As the Taliban advances continued in northern Afghanistan, tension between the Taliban and the Islamic Republic of Iran began to mount along the Iranian-Afghan border. The situation deteriorated sharply after it was acknowledged on 10 September 1998 that, in the course of the military operations carried out by the Taliban in Mazar-I-Sharif, eight Iranian diplomats and one journalist were killed on the premises of the Iranian Consulate General. After conducting initial military exercises on the border, involving some 70,000 troops, in early September, the Islamic Republic of Iran announced on 12 September 1998 that it would conduct military manoeuvres involving an additional 200,000 troops. To counter this, the Taliban moved some 10,000 fighters to the border areas from other front lines.

11. In spite of this development along the Iranian-Afghan border, the Taliban engaged in operations to take over the remaining areas controlled by forces of the United Front (UF) in the north. However, their multi-pronged offensive against the forces of Ahmad Shah Massoud of the UF did not succeed. On 17 October 1998, the UF forces re-entered Taloqan, the capital of Takhar province, which had fallen to the Taliban in August.

12. In his report, the Secretary-General went on to record:

> "Throughout the period, there had been many allegations as well as credible reports of external, mostly covert interference for both sides of the war. One of the stark examples of such outside intervention was the recent interception by the Kyrghyz authorities of a full train load of weapons and ammunition said to be destined for UF factions. Also, sources reported to UNSMA on sorties of unmarked aircraft to UF air bases and heavy military supplies ferried across the Oxus River to reinforce Massoud forces. The Taliban were in no way immune to similar allegations. There have been persistent reports of massive amounts of support, in terms of military equipment, know-how and funds, that their militia has allegedly received from outside sources." (A/33/695-S/1998/1109, para. 10).

13. In the context of these developments, the Secretary-General's Special Envoy for Afghanistan, Mr. Lakhdar Brahimi, has been engaged in consultations with all the Afghan factions and leaders of the Governments and authorities concerned. He undertook missions in September and October 1998 and in February and March 1999 on a range of issues extending from the allegations of massacres in 1997 and 1998, to the flare-up of fighting in northern Afghanistan and the tension between Iran and the Taliban. The core issue in these consultations, however, has been to work out a process and develop a framework for achieving lasting peace in Afghanistan.

14. These consultations led to the initiation of talks in Ashkabad on 14 March 1999 between representatives of the Taliban and the UF. Kabul Radio reported on 15 March 1999 that the Taliban and the UF had accepted a two-point peace accord that called for a cease-fire and for talks on a power-sharing formula. On 14 March 1999, the spokesmen for the two sides had told reporters that they had agreed to share power and to work for a permanent cease-fire. The Taliban spokesman had stated that they had agreed on the main principles of forming "a unified and widely representative government" and had spoken of establishing "a shared legislature, shared executive and shared judiciary". The next round of talks is expected to be held shortly.

15. These developments raised issues touching upon the operations of the United Nations in three major areas: (a) humanitarian assistance operations, (b) its responsibility in relation to the protection of human rights and (c) its role in securing the resolution of the armed conflict and in achieving lasting peace.

II. GENERAL OBSERVATIONS ON THE IMPACT OF THE SOCIAL, ECONOMIC AND POLITICAL FACTORS ON THE HUMAN RIGHTS SITUATION

16. The overall situation at the end of 1998 was characterized by continuing armed conflict, the political crisis resulting from lack of agreement on the framework for durable peace, the continuing violations and denial of human rights and the deteriorating humanitarian situation, affected by the absence of international personnel of the United Nations agencies as well as others engaged in humanitarian work, and the reduction of resource flows.

17. A daunting challenge is presented by the economic and social, and by the political realities on the ground. The economic and social factors include: widespread loss of human life, destruction of social and economic infrastructure, environmental degradation, food insecurity and malnutrition - with the additional losses caused by the floods and earthquakes which struck south-western and north-eastern Afghanistan in 1998 - high levels of unemployment and poverty, and further increases in illicit drug production. These factors are reflected in some of the critical socio-economic indicators summarized below:

Food consumption per capita is still lower than before the war;

Chronic malnutrition exists in most parts of Afghanistan;

Hardly any girls and only 24 per cent of boys attend school;

Over 3 million refugees still live outside Afghanistan;

Over 2 million people are internally displaced;

Over 700 square kilometers are known to be contaminated with landmines and unexploded ordnance;

The infant and maternal mortality rates are among the highest in the world;

One million houses need rebuilding;

Only five per cent of the rural population have access to safe water;

In most of the country, women suffer deprivation due to widespread poverty, low literacy levels, limited opportunities to participate in public life, limited availability of health care facilities and restrictions on the employment of women in urban areas;

The country has acquired the dubious distinction of being the world's largest producer of narcotic substances.

18. The present political context is defined by a lull in the fighting as possibilities of a transition towards a negotiated peace are explored. The Taliban authorities made significant military gains in August 1998. While they seek international recognition, they continue to pursue policies which are in conflict with international human rights standards by which Afghanistan is bound as a party to the major international human rights instruments. These include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention on the Prevention and Punishment of the Crime of Genocide. It has also signed the Convention on the Elimination of All Forms of Discrimination against Women.

19. The Afghan people have suffered gross violations of their human rights during 20 years of armed conflict, which was triggered by the invasion of Afghanistan by foreign troops. The Geneva Accords, signed in 1988, envisaged that with the withdrawal of foreign troops (completed in 1989) the conditions would be created that would enable Afghan refugees to return voluntarily to their country. Non-interference in the internal affairs of Afghanistan and non-intervention were to be internationally guaranteed and the United Nations was entrusted with a monitoring role in relation to the interrelated set of obligations created by the Accords. It was expected that the human rights of the Afghan people would thus be safeguarded. This legitimate expectation remains unfulfilled to date.

20. The 1998 report and the 1998 interim report (memorandum) of the previous Special Rapporteur referred to alleged massacres and summary executions, to outbursts of ethnic violence and other violations of human rights ranging from the infliction of inhuman and degrading punishment to systematic gender discrimination, including denial to women of access to medical care and employment. The draft memorandum was sent to the Taliban representatives who by their note verbale of 21 October 1998 contested these allegations, stating that they had not been verified and that no mention had been made of cases in which, according to them, "thousands of unarmed and peace-demanding Taliban were tortured". Their response concluded with an appeal "to humanitarians of the world to please heal the wounds of the Afghans".

21. The healing of the wounds of the Afghan people requires an end to human rights violations. Such healing must embrace all Afghans, regardless of ethnicity, religion and gender. During his visit to Kabul, the Special Rapporteur observed some relaxation of the restrictions imposed on the rights of women, as a few women doctors and nurses were seen at work in a hospital attending to female patients. A more flexible attitude was expressed by Taliban representatives with regard to the access of girls to education, and a recent edict granted exemption to needy widows from the restriction against the employment of women in urban areas. It was urged that it was imperative to maintain and enhance humanitarian assistance not only to meet basic human needs and thus to uphold the right to life of millions of suffering Afghans, but also to provide incentives for ending or significantly relaxing the existing restrictions which were violative of human rights. A more comprehensive assessment would be possible through further visits by the Special Rapporteur and would be helped by visits of the thematic Special Rapporteurs on extrajudicial, summary or arbitrary executions, on torture and on violence against women. The United Nations investigation into the massacres may also provide material which would be useful for an overall assessment.

22. The Strategic Framework statement of September 1998 relating to United Nations operations in Afghanistan describes the complex reality of that country thus: "It mixes a volatile and violent political crisis, a human rights and humanitarian emergency, and two decades of missed development opportunities. The fragmentation of the country and the collapse of practically all institutions of the State, also constitute `an emergency of governance'". The declared purpose of the Strategic Framework, namely to enhance the synergy between the political objective of building peace and international assistance activities, and promoting greater effectiveness and

coherence of such activities requires a positive and flexible approach and enhancement of resources for humanitarian assistance, not a negative and rigid approach or the reduction of the resources committed to humanitarian assistance.

23. In its resolution 1193 (1998) of 28 August 1998, the Security Council identified a further relevant factor when it noted the fact that despite repeated pleas by the Security Council, the General Assembly and the Secretary-General to halt foreign interference in Afghanistan, including the involvement of foreign military personnel and the supply of arms and ammunition to all parties in the conflict, such interference continued unabated.

24. The unceasing flow of arms to all sides in the conflict has been recognized as a critical factor which contributes to the persistence of human rights abuses by subjecting men, women and children to the arbitrary rule of those who use those arms and by making people virtual hostages in their own land. Apprehensions have been expressed that the onset of spring may see the resumption of conflict in a number of areas in Afghanistan, as it has been reported that there are visible signs of fresh military supplies being received by all sides. This would expose the local civilian population to gross violations of human rights, ranging from revenge killing to starvation from blockades.

25. The United Nations has recognized the central importance of human rights in a strategy of peace building through a transition process leading to the formation of "a representative transitional government of national unity". The objectives of that policy are stated to be:

To achieve a cessation of hostilities;

To seek a regional political consensus in support of the peace process;

To seek direct negotiations between all parties on a political settlement.

26. It was expressly acknowledged that the strategy is based upon the following assumptions: "that Afghanistan's neighbours need peace as much as it does - the war in Afghanistan has had profound implications for its neighbouring countries; that no peace is possible in Afghanistan unless all arms and ammunition supply to the warring factions is stopped; that an embargo on arms can only succeed if the neighbouring countries actively assist in enforcing it; that no single faction, at the present time, can govern the totality of Afghan territory by itself and a government of national unity, composed of the different factions, is therefore needed; and, finally, that all factions must make significant progress in the area of human rights, particularly the treatment of women and minority ethnic groups, in order to attain sustainable peace, international recognition and full-scale resumption of reconstruction and developmental assistance".

27. The Security Council endorsed this strategy in its resolution 1214 (1998) of 8 December 1998 by reiterating its call upon

all States to take resolute measures to prohibit their military personnel from planning and participating in military operations in Afghanistan and immediately to end the supply of arms and ammunitions to all parties to the conflict, and by demanding that all Afghan factions put an end to discrimination against girls and women and other violations of human rights as well as violations of international humanitarian law, and adhere to international norms and standards in this sphere.

III. AN OVERALL STRATEGY FOR UPHOLDING AND IMPLEMENTING HUMAN RIGHTS IN AFGHANISTAN

28. These realities call for an overall strategy to uphold and implement human rights in Afghanistan. It is in recognition of this need that the United Nations has been engaged in a comprehensive review of its operations and is taking steps to strengthen mechanisms for coordination.

29. In relation to UNSMA and all United Nations funds and programmes, in particular OCHA, the Secretary-General is committed to strengthening such coordination in the context of the Strategic Framework. In pursuance of this commitment, a special civil affairs unit, initially composed of 12 monitors, will be deployed in major cities in Afghanistan, security conditions permitting. The exact location and functioning of this unit is to be determined following the assessment mission that is expected to visit Afghanistan in April 1999. The primary objective of the unit will be to promote respect for human rights and compliance with minimum humanitarian standards, and to deter massive and systematic violations of human rights in the future. This will need to be supplemented by closer monitoring of conditions in areas inhabited by large concentrations of Afghan refugees, as reports have been received of cases of forced repatriation, threats to life and closure of educational and health facilities servicing refugees.

30. These developments present an opportunity to adopt a bold and imaginative strategy which would enable the international community to meet the urgent humanitarian needs of the people of Afghanistan while firmly adhering to the commitment to establish a framework for durable peace based on a realization of the human rights of all Afghans.

31. The core elements of that strategy should consist of the following:

(i) A process must be nurtured and facilitated by the United Nations which would involve all segments of the Afghan population and enable them to participate in the working out of the framework and basis for lasting peace in Afghanistan.

(ii) The process initiated in Ashkabad and the efforts of the Six plus Two Group of States must be sustained in order to continue meaningful consultations with all segments of the Afghan people in all parts of Afghanistan and those displaced outside the country.

(iii) The basic elements which should form part of the framework to be developed should include: (a) recognition of the right to choose freely a broad-based, multi-ethnic and fully representative government consisting of representatives of all segments of the

Afghan people; (b) an inclusive participatory process would involve continuing consultations to spell out each phase of the transition and clearly formulated steps to be taken in each phase; (c) while this transition was being affected within the agreed framework, the international community would use its resources to support the transition process and in particular commit itself to the actions identified in (iv) below.

(iv) The human-rights based process of transition should be pursued through: (a) promoting an inclusive, participatory process which would enable constructive dialogue to be held with all participants on the effective implementation of human rights; (b) a human rights programme for Afghanistan should focus initially on advocacy and dissemination of the entire range of human rights issues (economic, social and cultural rights as well as civil and political rights); (c) a practical and workable policy should be adopted on discrimination against women and girls, as should a set of standards and benchmarks against which progress and compliance may be measured; (d) the Secretary-General should ensure that all United Nations activities in Afghanistan are carried out taking into account the principle of non-discrimination against women and girls, and that a gender perspective and special attention to the human rights of women and girls, are fully incorporated in the work of the civil affairs unit of UNSMA, including the training and selection of staff.

(v) All parties to the Afghan conflict should be urged publicly to reaffirm that they are committed to safeguarding internationally recognized human rights and to take measures to prevent human rights abuses, such as deliberate and arbitrary killings, torture including rape, abduction of people for ransom or on grounds of their ethnic identity, religion or political opinions. Such measures would include accepting independent and impartial procedures for investigating reports of human rights abuses and breaches of humanitarian law. The results of such investigations should be given to institutions involved in monitoring the human rights situation in Afghanistan, including the Special Rapporteur.

32. Steps aimed at achieving greater coordination in the pursuit of clearly defined objectives should enable the United Nations more effectively to play its critical role in orchestrating the efforts for a negotiated peace and at the same time in maintaining life-saving humanitarian assistance programmes. It must, however, be underscored that the programme for building a lasting peace must give due place to the progressive realization of the human rights of all the Afghan people - the men, women and children of Afghanistan.